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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2010

CLODUALDO HERNANDEZ GONZALEZ
11352 Darcy Street
Santa Fe Springs, California 90670

A C C U S A T I O N

Respiratory Care Practitioner License No. 12064

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On or about September 14, 1988, the Board issued Respiratory Care Practitioner License Number 12064 to Clodualdo Hernandez Gonzalez (Respondent). On September 30, 2004, pursuant to Welfare and Institutions Code Section 11350.6, respondent was issued a 150 day temporary license which would expire on February 27, 2005. The license was subsequently denied based on non-compliance with Welfare and Institutions Code section 11350.6. The license was returned to valid status on August 29, 2005, and will expire on May 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

" . . .

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction. . . ."

7. Section 3752 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

1 8. Section 490 of the Code states:

2 “A board may suspend or revoke a license on the ground that the licensee has been
3 convicted of a crime, if the crime is substantially related to the qualifications, functions, or
4 duties of the business or profession for which the license was issued. A conviction within
5 the meaning of this section means a plea or verdict of guilty or a conviction following a
6 plea of nolo contendere. Any action which a board is permitted to take following the
7 establishment of a conviction may be taken when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal, or when an order granting probation
9 is made suspending the imposition of sentence, irrespective of a subsequent order under the
10 provisions of Section 1203.4 of the Penal Code.”

11 9. Section 3752.5 of the Code states:

12 “For purposes of Division 1.5 (commencing with Section 475), and this chapter
13 [the Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily
14 injury shall be considered a crime substantially related to the qualifications, functions, or
15 duties of a respiratory care practitioner.”

16 COST RECOVERY

17 10. Section 3753.5, subdivision (a) of the Code states:

18 “In any order issued in resolution of a disciplinary proceeding before the board, the
19 board or the administrative law judge may direct any practitioner or applicant found to
20 have committed a violation or violations of law to pay to the board a sum not to exceed the
21 costs of the investigation and prosecution of the case.”

22 11. Section 3753.7 of the Code states:

23 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall
24 include attorney general or other prosecuting attorney fees, expert witness fees, and other
25 administrative, filing, and service fees.”

26 12. Section 3753.1, subdivision (a) of the Code states:

27 “An administrative disciplinary decision imposing terms of probation may include,
28 among other things, a requirement that the licensee-probationer pay the monetary costs

1 associated with monitoring the probation."

2 CAUSE FOR DISCIPLINE

3 (Conviction of a Crime)

4 13. Respondent is subject to disciplinary action under sections 3750,
5 subdivision (d), 3752, 490 and 3752.5 of the Code, in that he was convicted of a crime
6 substantially related to the qualifications, functions or duties of a respiratory care practitioner. The
7 circumstances are as follows:

8 A. On November 13, 2004, respondent and the victim, who was the
9 mother of his child, were arguing in a vehicle after respondent had consumed several beers.
10 The victim pulled into a parking lot and asked respondent to exit the vehicle. He refused,
11 began insulting her and said, "If you say one more thing, I'm going to punch you in the
12 face." The victim feared for her safety and attempted to contact the police for assistance.
13 As she was dialing her cellular telephone, respondent grabbed the telephone, pulled her
14 head towards him, and struck her in the mouth with a closed fist. Respondent then pulled
15 out a large chunk of her hair and forcibly removed the telephone from her hand. She
16 observed a fire truck enter the parking lot and she began honking the horn to attract
17 attention. Whittier Fire Department employees contacted the police regarding the domestic
18 violence incident.

19 A Whittier police officer observed that the victim was bleeding from
20 her mouth, and there were several lacerations on the inside of her lower lip and on her gum
21 line, as well as several marks on her left cheek. Respondent was placed under arrest. The
22 victim obtained an emergency restraining order against him.

23 B. On December 23, 2004, a complaint was filed against respondent in
24 a criminal proceeding entitled *People v. Clodualdo Hernandez Gonzalez*, in Superior
25 Court, Los Angeles County, Case Number 4WH06935, charging him with one count of
26 corporal injury to a spouse/cohabitant/child's parent, a violation of Penal Code section
27 273.5(a), a misdemeanor. On June 3, 2005, the complaint was amended by interlineation
28 to add count 2, battery, a violation of Penal Code section 242, a misdemeanor.

1 C. On June 3, 2005, respondent was convicted by a plea of nolo
2 contendere to count 2, battery, a violation of Penal Code section 242. Respondent was
3 placed on probation for three years. He was ordered to serve one day in county jail (with
4 credit for one day), perform 15 days of Cal Trans, pay fines of \$520.00, and complete a
5 52-week domestic violence counseling program. On June 22, 2005, the Cal Trans order
6 was vacated and respondent was ordered to perform 160 hours of community service.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

10 1. Revoking or suspending Respiratory Care Practitioner License Number
11 12064, issued to Clodualdo Hernandez Gonzalez;

12 2. Ordering Clodualdo Hernandez Gonzalez to pay the Respiratory Care
13 Board the costs of the investigation and enforcement of this case, and if placed on probation, the
14 costs of probation monitoring;

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: January 26, 2006

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19 Original signed by Liane Zimmerman for:
20 STEPHANIE NUNEZ
21 Executive Officer
22 Respiratory Care Board of California
23 Department of Consumer Affairs
24 State of California
25 Complainant
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